

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

MICHAEL BERTSCH,)
)
)
Plaintiff,)
)
)
-vs-) Case No. CIV-24-423-F
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)
DELTA AIRLINES,)
)
)
Defendant.)

ORDER

On November 18, 2024, defendant Delta Air Lines Inc. (incorrectly named Delta Airlines) filed an Application for Status Conference (doc. no. 15), requesting the court to set this matter for status conference for several reasons, which included (1) plaintiff Michael Bertsch had not responded to defendant's first set of interrogatories and requests for production; (2) plaintiff's counsel had not responded to defense counsel's inquiry regarding the delinquent discovery responses; and (3) plaintiff had failed to file final witness and exhibit lists within the time specified by the court's Scheduling Order.

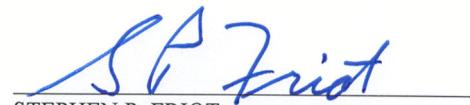
By order (doc. no. 16) dated November 20, 2024, the court ordered plaintiff to file a response to the Application for Status Conference on or before November 26, 2024. The court specifically advised plaintiff that failure to respond to the application within the time specified by the court may result in the dismissal without prejudice of plaintiff's action without further notice to plaintiff.

Plaintiff has not filed a response to the Application for Status Conference as ordered by the court. Because of plaintiff's failure to comply with the court's order and plaintiff's failure to prosecute this action, the court finds that plaintiff's action

should be dismissed without prejudice pursuant to Rule 41(b), Fed. R. Civ. P. *See, Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 (10th Cir. 2007) (“Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts [] to dismiss actions *sua sponte* for a plaintiff’s failure to . . . comply with the . . . court’s orders.”); *see also, AdvantEdge Business Group v. Thomas E. Mestmaker & Associates, Inc.*, 552 F.3d 1233, 1236 (10th Cir. 2009) (“A district court undoubtedly has discretion to sanction a party for failing to prosecute or defend a case[.]”).

Accordingly, plaintiff Michael Bertsch’s action against defendant Delta Air Lines Inc. is **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 41(b), Fed. R. Civ. P.

DATED this 27th day of November, 2024.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE